

## Committee Substitute for House Bill No. 1511

An act relating to the communications services tax; amending s. 202.125, F.S.; providing definitions of religious or educational institutions to conform an exemption to the sales tax exemption provided for such institutions; creating s. 202.151, F.S.; clarifying the imposition of a use tax on certain purchases of communications services; authorizing the Department of Revenue to adopt rules; amending s. 202.16, F.S.; providing an exception to the requirement that dealers separately state the communications services tax on bills and invoices; creating s. 202.205, F.S.; providing a transition rule for counties and municipalities that reduced the local communications services tax on a specified date; amending s. 202.22, F.S.; clarifying provisions governing the electronic databases used to determine local tax situs for the communications services tax; amending s. 337.401, F.S.; changing the date on which local governments must notify dealers that provide communications services of changes in permit fees; revising provisions relating to charges for use of rights-of-way; providing definitions; authorizing certain counties or municipalities to levy an annual charge upon certain providers for using municipal rights-of-way; providing limitations; providing criteria; specifying application; amending s. 365.172, F.S.; clarifying that the E911 fee applies to certain customers whose place of primary use is within the state; specifying that certain definitions applicable to the Communications Services Tax Simplification Law apply to the E911 fee; amending ss. 212.0501, 212.08, 212.20, 509.032, and 561.1105, F.S.; conforming cross references to changes made by the act; specifying that certain provisions of the act are remedial in nature and intended to clarify the law in effect on the effective date of the act; requiring the Department of Revenue to submit a report of the accuracy of the 2001 revenue estimates of the state and local communications services taxes to the Governor, the President of the Senate, and the Speaker of the House of Representatives; repealing s. 212.05(1)(g), F.S., relating to a sales tax on certain substitute telecommunications equipment; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 202.125, Florida Statutes, is amended to read:

202.125 Sales of communications services; specified exemptions.—

(4) The sale of communications services to a religious institution or educational institution ~~organization~~ that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code, or by a religious institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code having an established physical place for worship at which nonprofit religious services and activities are regularly conducted and car-

ried on, is exempt from the taxes imposed or administered pursuant to ss. 202.12 and 202.19. As used in this subsection, the term:

(a) “Religious institution” means an organization owning and operating an established physical place for worship at which nonprofit religious services and activities are regularly conducted. The term also includes:

1. Any nonprofit corporation the sole purpose of which is to provide free transportation services to religious institution members, their families, and other religious institution attendees.

2. Any nonprofit state, district, or other governing or administrative office the function of which is to assist or regulate the customary activities of religious institutions.

3. Any nonprofit corporation that owns and operates a television station in this state of which at least 90 percent of the programming consists of programs of a religious nature and the financial support for which, exclusive of receipts for broadcasting from other nonprofit organizations, is predominantly from contributions from the public.

4. Any nonprofit corporation the primary activity of which is making and distributing audio recordings of religious scriptures and teachings to blind or visually impaired persons at no charge.

5. Any nonprofit corporation the sole or primary purpose of which is to provide, upon invitation, nonprofit religious services, evangelistic services, religious education, administrative assistance, or missionary assistance for a religious institution, or established physical place of worship at which nonprofit religious services and activities are regularly conducted.

(b) “Educational institution” includes:

1. Any state tax-supported, parochial, religious institution, and nonprofit private school, college, or university that conducts regular classes and courses of study required for accreditation by or membership in the Southern Association of Colleges and Schools, the Florida Council of Independent Schools, or the Florida Association of Christian Colleges and Schools, Inc.

2. Any nonprofit private school that conducts regular classes and courses of study which are accepted for continuing education credit by a board of the Division of Medical Quality Assurance of the Department of Health.

3. Any nonprofit library.

4. Any nonprofit art gallery.

5. Any nonprofit performing arts center that provides educational programs to school children, which programs involve performances or other educational activities at the performing arts center and serve a minimum of 50,000 school children a year.

6. Any nonprofit museum that is open to the public.

Section 2. Section 202.151, Florida Statutes, is created to read:

202.151 Use tax imposed on certain purchasers of communications services.—Any person who purchases communications services that are otherwise taxable under ss. 202.12 and 202.19 at retail from a seller in another state, territory, the District of Columbia, or any foreign country shall report and remit to the department the taxes imposed by or administered under this chapter on the communications services purchased and used, the same as if such communications services had been purchased at retail from a dealer in this state. This section does not apply if the out-of-state seller registers as a dealer in this state and collects from the purchaser the taxes imposed by or administered under this chapter. The department may adopt rules governing the reporting and remitting of communications services taxes by purchasers who purchase from out-of-state sellers who do not collect the taxes imposed by or administered under this chapter.

Section 3. Paragraph (b) of subsection (1) of section 202.16, Florida Statutes, is amended to read:

202.16 Payment.—The taxes imposed or administered under this chapter and chapter 203 shall be collected from all dealers of taxable communications services on the sale at retail in this state of communications services taxable under this chapter and chapter 203. The full amount of the taxes on a credit sale, installment sale, or sale made on any kind of deferred payment plan is due at the moment of the transaction in the same manner as a cash sale.

(1)

(b) Each dealer of communications services selling communications services in this state shall collect the taxes imposed under this chapter and chapter 203 from the purchaser of such services, and such taxes must be stated separately from all other charges on the bill or invoice. Notwithstanding the requirement in this paragraph and in s. 202.35 to separately state such taxes, a public lodging establishment licensed under chapter 509 may notify purchasers of the taxes imposed under this chapter on a notice in a guest room posted in a manner consistent with the requirements of s. 509.2015, rather than separately stating the taxes on the guest bill or invoice.

Section 4. Section 202.205, Florida Statutes, is created to read:

202.205 Transition rule for local rates.—Notwithstanding s. 202.21, the rate of the local communications services tax for a county or municipality that adopted a resolution or ordinance reducing the rate of tax effective October 1, 2002, and that notified the Department of Revenue of the reduced rate by mail postmarked by July 16, 2001, shall be the adopted reduced rate beginning October 1, 2002. However, the local governing body of the county or municipality may change the local rate effective January 1, 2003, in the manner provided in this chapter.

Section 5. Paragraph (b) of subsection (2) and paragraphs (a) and (g) of subsection (3) of section 202.22, Florida Statutes, are amended to read:

## 202.22 Determination of local tax situs.—

(2)

(b)1. Each local taxing jurisdiction shall furnish to the department all information needed to create and update the electronic database, including changes in service addresses, annexations, incorporations, reorganizations, and any other changes in jurisdictional boundaries. The information furnished to the department must specify an effective date, which must be the next ensuing January 1 or July 1, and such information must be furnished to the department at least 120 days prior to the effective date. However, the requirement that counties submit information pursuant to this paragraph shall be subject to appropriation.

2. The department shall update the electronic database in accordance with the information furnished by local taxing jurisdictions under subparagraph 1. Each update must specify the effective date as the next ensuing January 1 or July 1 and must be posted by the department on a website not less than 90 days prior to the effective date. A substantially affected person may provide notice to the database administrator of an objection to information contained in the electronic database. If an objection is supported by competent evidence, the department shall forward the evidence to the affected local taxing jurisdictions and update the electronic database in accordance with the determination furnished by local taxing jurisdictions to the department. The department shall also furnish the update on magnetic or electronic media to any dealer of communications services or vendor who requests the update on such media. However, the department may collect a fee from the dealer of communications services which does not exceed the actual cost of furnishing the update on magnetic or electronic media. Information contained in the electronic database is conclusive for purposes of this chapter. The electronic database is not an order, a rule, or a policy of general applicability.

3. Each update must identify the additions, deletions, and other changes to the preceding version of the database. ~~Each dealer of communications services shall be required to collect and remit local communications services taxes imposed under this chapter only for those service addresses that are contained in the database and for which all of the elements required by this subsection are included in the database.~~

(3) For purposes of this section, a database must be certified by the department pursuant to rules that implement the following criteria and procedures:

(a) The database must assign street addresses, address ranges, post office boxes, or post office box ranges to the proper jurisdiction with an overall accuracy rate of 95 percent at a 95 percent level of confidence, as determined through a statistically reliable sample. The accuracy must be measured based on the entire geographic area within the state covered by such database or, ~~if the service area of the dealer does not encompass the entire state, based on the dealer's entire service area.~~

(g) Notwithstanding any provision of law to the contrary, if a dealer submits an application for certification on or before the later of October 1, 2001, or the date ~~that~~ which is 30 days after the date on which the applicable department rule becomes effective, the 180-day time limit set forth in paragraph (d) does not apply. During the time the application is under consideration by the department or, if the application is denied, until the denial is no longer subject to administrative or judicial review or until a later date fixed by order of the reviewing court and such application is neither approved nor denied within the time period set forth in paragraph (d):

1. For purposes of computing the amount of the deduction to which such dealer is entitled under s. 202.28, the dealer shall be deemed to have used a certified database pursuant to paragraph (1)(b), ~~until such time as the application for certification is denied.~~

2. In the event that such application is approved, such approval shall be deemed to have been effective on the date of the application or October 1, 2001, whichever is later.

Section 6. Paragraph (j) of subsection (3), subsection (4) and subsection (6) of section 337.401, Florida Statutes, are amended to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(3)

(j) Pursuant to this paragraph, any county or municipality may by ordinance change either its election made on or before July 16, 2001, under paragraph (c) or an election made under this paragraph.

1.a. If a municipality or charter county changes its election under this paragraph in order to exercise its authority to require and collect permit fees in accordance with this subsection, the rate of the local communications services tax imposed by such jurisdiction pursuant to ss. 202.19 and 202.20 shall automatically be reduced by the sum of 0.12 percent plus the percentage, if any, by which such rate was increased pursuant to sub-subparagraph (c)1.b.

b. If a municipality or charter county changes its election under this paragraph in order to discontinue requiring and collecting permit fees, the rate of the local communications services tax imposed by such jurisdiction pursuant to ss. 202.19 and 202.20 may be increased by ordinance or resolution by an amount not to exceed 0.24 percent.

2.a. If a noncharter county changes its election under this paragraph in order to exercise its authority to require and collect permit fees in accordance with this subsection, the rate of the local communications services tax imposed by such jurisdiction pursuant to ss. 202.19 and 202.20 shall automatically be reduced by the percentage, if any, by which such rate was increased pursuant to sub-subparagraph (c)2.b.

b. If a noncharter county changes its election under this paragraph in order to discontinue requiring and collecting permit fees, the rate of the local

communications services tax imposed by such jurisdiction pursuant to ss. 202.19 and 202.20 may be increased by ordinance or resolution by an amount not to exceed 0.24 percent.

3.a. Any change of election pursuant to this paragraph and any tax rate change resulting from such change of election shall be subject to the notice requirements of s. 202.21; however, no such change of election shall become effective prior to January 1, 2003.

b. Any county or municipality changing its election under this paragraph in order to exercise its authority to require and collect permit fees shall, in addition to complying with the notice requirements under s. 202.21, provide to all dealers providing communications services in such jurisdiction written notice of such change of election by ~~September~~ July 1 immediately preceding the January 1 on which such change of election becomes effective. For purposes of this sub-subparagraph, dealers providing communications services in such jurisdiction shall include every dealer reporting tax to such jurisdiction pursuant to s. 202.37 on the return required under s. 202.27 to be filed on or before the 20th day of May immediately preceding the January 1 on which such change of election becomes effective.

(4) As used in this section, “communications services” and “dealer” have ~~has~~ the same meaning ascribed in chapter 202, and “cable service” has the same meaning ascribed in 47 U.S.C. s. 522, as amended.

(6)(a) As used in this subsection, the following definitions apply:

1. A “pass-through provider” is any person who places or maintains a communications facility in the roads or rights-of-way of a municipality or county that levies a tax pursuant to chapter 202 and who does not remit taxes imposed by that municipality or county pursuant to chapter 202.

2. A “communications facility” is a facility that may be used to provide communications services. Multiple cables, conduits, strands, or fibers located within the same conduit shall be considered one communications facility for purposes of this subsection.

(b) A municipality that levies a tax pursuant to chapter 202 may charge a pass-through provider that places or maintains a communications facility in the municipality’s roads or rights-of-way an annual amount not to exceed \$500 per linear mile or portion thereof. A municipality’s roads or rights-of-way do not include roads or rights-of-way that extend in or through the municipality but are state, county, or another authority’s roads or rights-of-way.

(c) A county that levies a tax pursuant to chapter 202 may charge a pass-through provider that places or maintains a communications facility in the county’s roads or rights-of-way, including county roads or rights-of-way within a municipality in the county, an annual amount not to exceed \$500 per linear mile or portion thereof. However, a county shall not impose a charge for any linear miles, or portions thereof, of county roads or rights-of-way where a communications facility is placed that extend through any municipality within the county to which the pass-through provider remits

a tax imposed pursuant to chapter 202. A county's roads or rights-of-way do not include roads or rights-of-way that extend in or through the county but are state, municipal, or another authority's roads or rights-of-way.

(d) The amounts charged pursuant to this subsection shall be based on the linear miles of roads or rights-of-way where a communications facility is placed, not based on a summation of the lengths of individual cables, conduits, strands, or fibers. The amounts referenced in this subsection may be charged only once annually and only to one person annually for any communications facility. A municipality or county shall discontinue charging such amounts to a person that has ceased to be a pass-through provider. Any annual amounts charged shall be reduced for a prorated portion of any 12-month period during which the person remits taxes imposed by the municipality or county pursuant to chapter 202. Any excess amounts paid to a municipality or county shall be refunded to the person upon written notice of the excess to the municipality or county.

(e) This subsection does not alter any provision of this section or s. 202.24 relating to taxes, fees, or other charges or impositions by a municipality or county on a dealer of communications services or authorize that any charges be assessed on a dealer of communications services, except as specifically set forth herein. A municipality or county may not charge a pass-through provider any amounts other than the charges under this subsection as a condition to the placement or maintenance of a communications facility in the roads or rights-of-way of a municipality or county by a pass-through provider, except that a municipality or county may impose permit fees on a pass-through provider consistent with paragraph (3)(c) if the municipality or county elects to exercise its authority to collect permit fees under paragraph (3)(c).

(f) The charges under this subsection do not apply to communications facilities placed in a municipality's or county's rights-of-way prior to the effective date of this subsection with permission from the municipality or county, if any was required, except to the extent the facilities of a pass-through provider were subject to per linear foot or mile charges in effect as of October 1, 2001, in which case the municipality or county may only impose on a pass-through provider charges consistent with paragraph (b) or paragraph (c) for such facilities. Notwithstanding the foregoing, this subsection does not impair any written agreement between a pass-through provider and a municipality or county imposing per linear foot or mile charges for communications facilities placed in municipal or county roads or rights-of-way that is in effect prior to the effective date of this subsection. Upon the termination or expiration of any such written agreement, any charges imposed shall be consistent with paragraph (b) or paragraph (c). Notwithstanding the foregoing, until October 1, 2005, this subsection shall not affect a municipality or county continuing to impose charges in excess of the charges authorized in this subsection on facilities of a pass-through provider that is not a dealer of communications services in the state under chapter 202, but only to the extent such charges were imposed by municipal or county ordinance or resolution adopted prior to February 1, 2002. Effective October 1, 2005, any charges imposed shall be consistent with paragraph (b) or paragraph (c).

~~(g) The charges authorized in this subsection shall not be applied with respect to any communications facility that is used exclusively for the internal communications of an electric utility or other person in the business of transmitting or distributing electric energy. If a municipality or county imposes any amount on a person or entity other than a provider of communications services in connection with the placement or maintenance by such person or entity of a communication facility in municipal or county roads or rights-of-way, such amounts, if any, shall not exceed the highest amount, if any, the municipality or county is imposing in such context as of the date this act becomes a law. If a municipality or county is not imposing any amount in such context as of the date this act becomes a law, any amount, if any, imposed thereafter, shall not be less than \$500 per linear mile, payable annually, of any cable, fiber optic, or other pathway that makes physical use of the municipal or county right-of-way. Any excess of \$500 shall be applied in a nondiscriminatory manner and shall not exceed the sum of:~~

~~(a) Costs directly related to the inconvenience or impairment solely caused by the disturbance to the municipal or county right-of-way;~~

~~(b) The reasonable cost of the regulatory activity of the municipality or county; and~~

~~(c) The proportionate share of cost of land for such street, alley, or other public way attributable to utilization of the right-of-way by a person or entity other than a provider of communications services.~~

~~For purposes of this subsection, the term communications facility shall not include communications facilities owned, operated, or used by electric utilities or regional transmission organizations exclusively for internal communications purposes. Except as specifically provided herein, municipalities and counties retain all existing authority, if any, to collect fees relating to public roads and rights-of-way from electric utilities or regional transmission organizations, and nothing in this subsection shall alter this authority.~~

Section 7. Effective with respect to bills issued by providers of mobile telecommunications services after August 1, 2002, paragraph (a) of subsection (8) and subsection (9) of section 365.172, Florida Statutes, are amended to read:

365.172 Wireless emergency telephone number "E911."—

(8) WIRELESS E911 FEE.—

(a) Each home service provider shall collect a monthly fee imposed on each customer whose place of primary use is service subscriber who has a service number that has a billing address within this state. The rate of the fee shall be 50 cents per month per each service number, beginning August 1, 1999. The fee shall apply uniformly and be imposed throughout the state.

(9) MANAGEMENT OF FUNDS.—

(a) Each provider, as a part of its monthly billing process, shall collect the fee imposed under subsection (8). The provider may list the fee as a separate entry on each bill, in which case the fee must be identified as a fee for E911 services. A provider shall remit the fee only if the fee is paid by the subscriber. If a provider receives a partial payment for a monthly bill from a subscriber, the amount received shall first be applied to the payment due the provider for the provision of telecommunications service.

(b) A provider is not obligated to take any legal action to enforce collection of the fees for which any subscriber is billed. The provider shall provide to the board each quarter a list of the names, addresses, and service numbers of all subscribers who have indicated to the provider their refusal to pay the fee.

(c) Each provider may retain 1 percent of the amount of the fees collected as reimbursement for the administrative costs incurred by the provider to bill, collect, and remit the fee. The remainder shall be delivered to the board and deposited in the fund. The board shall distribute the remainder pursuant to s. 365.173.

(d) Each provider shall deliver revenues from the fee to the board within 60 days after the end of the month in which the fee was billed, together with a monthly report of the number of ~~billing addresses of wireless customers whose place of primary use is~~ subscribers in each county. A provider may apply to the board for a refund of, or may take a credit for, any fees remitted to the board which are not collected by the provider within 6 months following the month in which the fees are charged off for federal income tax purposes as bad debt. The board may waive the requirement that the fees and number of customers whose place of primary use is in each county ~~billing addresses~~ be submitted to the board each month and authorize a provider to submit the fees and number of customers ~~billing addresses~~ quarterly if the provider demonstrates that such waiver is necessary and justified.

(e) For purposes of this section, the definitions contained in s. 202.11 and the provisions of s. 202.155 apply in the same manner and to the same extent as such definitions and provisions apply to the taxes levied pursuant to chapter 202 on mobile communications services.

~~(f)~~(e) As used in this subsection, the term “provider” includes any person or entity that resells wireless service and was not assessed the fee by its resale supplier.

Section 8. Subsection (4) of section 212.0501, Florida Statutes, is amended to read:

212.0501 Tax on diesel fuel for business purposes; purchase, storage, and use.—

(4) Except as otherwise provided in s. 212.05(1)(k)(4), a licensed sales tax dealer may elect to collect such tax pursuant to this chapter on all sales to each person who purchases diesel fuel for consumption, use, or storage by a trade or business. When the licensed sales tax dealer has not elected to

collect such tax on all such sales, the purchaser or ultimate consumer shall be liable for the payment of tax directly to the state.

Section 9. Paragraph (v) of subsection (7) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—

(v) Professional services.—

1. Also exempted are professional, insurance, or personal service transactions that involve sales as inconsequential elements for which no separate charges are made.

2. The personal service transactions exempted pursuant to subparagraph 1. do not exempt the sale of information services involving the furnishing of printed, mimeographed, or multigraphed matter, or matter duplicating written or printed matter in any other manner, other than professional services and services of employees, agents, or other persons acting in a representative or fiduciary capacity or information services furnished to newspapers and radio and television stations. As used in this subparagraph, the term “information services” includes the services of collecting, compiling, or analyzing information of any kind or nature and furnishing reports thereof to other persons.

3. This exemption does not apply to any service warranty transaction taxable under s. 212.0506.

4. This exemption does not apply to any service transaction taxable under s. 212.05(1)(i)(j).

Exemptions provided to any entity by this subsection shall not inure to any transaction otherwise taxable under this chapter when payment is made by a representative or employee of such entity by any means, including, but not limited to, cash, check, or credit card even when that representative or employee is subsequently reimbursed by such entity.

Section 10. Paragraph (c) of subsection (6) of section 212.20, Florida Statutes, is amended to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.—

(6) Distribution of all proceeds under this chapter and s. 202.18(1)(b) and (2)(b) shall be as follows:

(c) Proceeds from the fees imposed under ss. 212.05(1)(h)(i)3. and 212.18(3) shall remain with the General Revenue Fund.

Section 11. Paragraph (f) of subsection (2) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(2) INSPECTION OF PREMISES.—

(f) In conducting inspections of establishments licensed under this chapter, the division shall determine if each coin-operated amusement machine that is operated on the premises of a licensed establishment is properly registered with the Department of Revenue. Each month the division shall report to the Department of Revenue the sales tax registration number of the operator of any licensed establishment that has on location a coin-operated amusement machine and that does not have an identifying certificate conspicuously displayed as required by s. 212.05(1)(h)(i).

Section 12. Section 561.1105, Florida Statutes, is amended to read:

561.1105 Inspection of licensed premises; coin-operated amusement machines.—In conducting inspections of establishments licensed under the Beverage Law, the division shall determine if each coin-operated amusement machine that is operated on the licensed premises is properly registered with the Department of Revenue. Each month, the division shall report to the Department of Revenue the sales tax registration number of the operator of any licensed premises that has on location a coin-operated amusement machine and that does not have an identifying certificate conspicuously displayed as required by s. 212.05(1)(h)(i).

Section 13. The amendments to sections 202.125(4), 202.22(2)(b) and (3)(a) and (g), and 212.05(1)(g), Florida Statutes, contained in this act are remedial in nature and intended to clarify the law in effect on the effective date of this act.

Section 14. By February 1, 2003, the Department of Revenue shall submit a report on the accuracy of the state communications services tax rates and the local communications services tax conversion rates imposed, authorized, or administered pursuant to chapter 202, Florida Statutes, to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report shall include a comparison of the available collection data and updated estimates for the sales tax portion, the gross receipts tax portion, and each local government's local portion of the communications services tax.

Section 15. Paragraph (g) of subsection (1) of section 212.05, Florida Statutes, as amended by section 38 of chapter 2001-140, Laws of Florida, is repealed.

Section 16. Except as otherwise provided herein, this act shall take effect upon becoming a law.

Approved by the Governor April 16, 2002.

Filed in Office Secretary of State April 16, 2002.